

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2007

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.33480 of 2007

M.P.No.1 of 2007

M/s.Neycer India Limited,
rep. by its Finance Manager,
Mr.T.Mani ... Petitioner

vs.

1. The Commercial Tax Officer,
Cuddalore Taluk Asst. Circle,
Mnjakuppam, Cuddalore-607 001.

2. The Deputy Commissioner (CT),
Vellore Division, Vellore. ... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus, to call for the records in R.P.No.3 of 2007, date 28.09.2007 on the file of the second respondent herein, quash the same and consequently, direct the second respondent to pass orders after affording an opportunity of hearing to the petitioner in accordance with law.

For Petitioner : Mr.G.Rm.Palaniappan
For Respondents : Mr.R.Mahadevan,
Addl. Govt. Pleader

O R D E R

The petitioner has sought a Writ of Certiorarified Mandamus to quash the order in R.P.No.3 of 2007, dated 28.09.2007 on the file of the second respondent and consequently, direct the second respondent to pass orders after affording opportunity of hearing to the petitioner in accordance with law.

2. Brief facts leading to the Writ Petition are as follows:

The petitioner-company is engaged in manufacture and sale of ceramic tiles and sanitary ware, registered under the erstwhile TNGST Act and presently under the Tamil Nadu Value Added Tax Act (hereinafter referred to as "the TNVAT Act"). In the year 1991, petitioner-company's net worth got completely eroded by the accumulated losses and therefore, the petitioner filed a reference under Section 15 of the Sick Industrial Companies (Special Provisions) Act (hereinafter referred to as SICA) and the proceedings are still pending. while so, the company was served with a notice dated 22.01.2007, requiring them to furnish additional security worth Rs.1.53 crores on the ground that

the petitioners have defaulted in payment of taxes. The proposals were confirmed by the Commercial Tax Officer, the first respondent herein, vide order dated 01.03.2007. 3. Aggrieved by the same, the petitioner filed Revision Petition in R.P.No.3 of 2007 under Section 54 of the TNVAT Act before the second respondent herein. The date of hearing was fixed on 21.09.2007, on which date, the counsel appearing for the petitioner filed a petition for adjournment requesting the matter to be listed for hearing on 3rd week of October' 2007. However, the second respondent adjourned the matter to 28.09.2007. Again, the learned counsel for the petitioner sent a letter seeking adjournment through fax, dated 27.09.2007, as he had to appear before the High Court, Madras in connection with another matter. Learned counsel for the petitioner, after filing of the petition for adjournment, had also enquired with the Office of the second respondent through Telephone in the morning on 28.09.2007, as to whether his petition for adjournment was considered favourably. They were informed that the matter would be adjourned and the date of next hearing would be communicated later. However, to their utter shock, the second respondent without appreciating the reason for seeking adjournment has passed an order, confirming the demand for additional security made by the first respondent, albeit with reduction in quantum.

4. Aggrieved by the same, the petitioner has preferred the above Writ Petition for the relief as stated above.

5. Learned counsel for the petitioner submitted that the second respondent, having acknowledged the petition for adjournment and assured that the matter would be adjourned, ought to have given an opportunity of personal hearing as provided under Section 54 of the TNVAT Act, and therefore, the impugned order is arbitrary and in violation of principles of natural justice. He further submitted that the second respondent ought to have considered that the proceedings are pending before BIFR and there cannot be any coercive proceedings in view of the embargo contained in Section 22 of SICA Act. He further submitted that the impugned proceedings requiring additional security with a threat of cancellation of registration certificate, when the petitioners are facing severe financial hardship, is nothing but a harrasment. For the abovesaid reasons, he submitted that the impugned order is liable to be set aside.

6. Mr.R.Mahadevan, learned Additional Government Pleader, submitted that the petitioner had never responded to the opportunities provided by the Department. He further submitted that neither the petitioner nor their authorised representatives appeared before the Revisional Authority to avail the opportunity of personal hearing. He further submitted that as there was huge arrears of tax, in the interests of Revenue, imposition of additional security is warranted under Section 39(5) of the TNVAT Act, 2006, and therefore, when the authority had exercised his jurisdiction by following due process of law, the petitioner ought to have conducted the proceedings diligently. Referring to the proceedings of BIFR, dated 11.10.2007, he further submitted that if the petitioner had approached BIFR for remedy, they ought not have collected tax from the customers and having collected tax from their customers, they are bound to remit the same to the Government. In these circumstances, learned Additional Government Pleader submitted that the petitioner has not approached this Court with clean hands and therefore, they are not entitled to the equitable remedy under Writ jurisdiction.

7. Heard the counsel appearing for the parties and perused the materials available on record.

8. The original order dated 01.03.2007, directing the petitioner to furnish additional security reads that as per Section 40(1) of the TNVAT Act, no person, who is not a registered dealer, shall collect any amount by way of tax under this Act. The order further reads that the petitioner-company was collecting taxes from their customers through sale invoices, but they were not remitting the same to the Government and they were found to be a regular defaulter in payment of tax. For proper realisation of tax payable under the TNVAT Act, the petitioner-company was requested to furnish

additional security worth about Rs.1.53 crores payable for the year 2005-06. Accordingly, a notice was issued to the petitioner inviting them to file their objections within 15 days from the receipt of notice and they were also requested to appear in person on any working day at 11.00 a.m., for personal hearing within fifteen days on receipt of notice. It is further evident from the impugned order that notice was served on the petitioner on 13.02.2007 and the dealer did not file any objections to the notice. It is further observed that there was no appearance before the Registering Authority, viz., the Commercial Tax Officer, Cuddalore for personal hearing. In these circumstances, to safeguard the interest of the revenue, the first respondent had directed the petitioner to furnish the additional security of Rs.1.53 crores under Rule 5(6) of the TNVAT Rules, 2007 in the prescribed Form F.

9. Aggrieved by the order of the Commercial Tax Officer, Cuddalore, the petitioner has filed a Revision Petition in R.P.No.3 of 2007 before the Deputy Commissioner, Vellore Division, the second respondent herein. It is evident from the impugned order that the Revisional Authority had issued summons granting opportunity to the petitioner to represent the case on 05.09.2007. The petitioner had failed to appear and sought for an adjournment, which was granted. Subsequently, two summons were issued and served on 21.09.2007, fixing the date of hearing on 28.09.2007. On this day, instead of appearing, the counsel for the petitioner had sent a letter to the revisional authority seeking for adjournment, stating that he has to appear before the High Court, Madras, in connection with some other matter. The revisional authority, on perusal of the records found that the petitioner was a regular defaulter and that they have to pay a huge arrears of tax of Rs.3.53 crores and passed the impugned order. Granting adjournments on fax message is certainly not followed by Courts or quasi-judicial authorities. If the learned counsel for the petitioner was not in a position to attend the hearing, atleast the petitioner could have made arrangements to appear before the revisional authority through their representative and sought adjournment. Therefore, it is apparent on the face of record that the petitioner had failed to appear before both the respondents, in spite of opportunities granted to them. Therefore, the contention of the learned counsel for the petitioner that the respondents have failed to provide reasonable opportunity of hearing, is not tenable, as the opportunity of being heard has not been availed by the petitioner.

10. The submissions of the learned counsel for the petitioner that he had received some information from the Office of the second respondent that his application for adjournment was considered is bereft of any details and the same is not acceptable. In so far as the contention relating to the financial status of the petitioner-company, as contended by the learned Additional Government Pleader that when the proceedings are pending before BIFR, the petitioner ought not to have collected tax from the customers and having collected the tax, they are bound to remit the same to the Government.

11. The tax arrears is about 3.53 crores and in order to safeguard the interest of the revenue, the second respondent in exercise of his powers under Section 39(4) of the TNVAT Act has rightly directed the petitioner to furnish additional security. It is evident from the impugned order that the revisional authority has considered the contention of the petitioner regarding the error in calculation of quantum of the additional security and suo-moto has reduced to Rs.50,86,179/- from Rs.1,01,72,358/-. While considering the merits of the case, the revisional authority has also examined the contentions of the petitioner with reference to the decision of this Court reported 12 STC 392. Being a quasi-judicial authority, he has considered the case on merits with reference to legal principle and also the passed favorable orders, reducing the quantum of additional security.

11. For all these reasons, I do not find any material irregularity in the procedure followed by the respondents and therefore, there is no ground to interfere with the impugned order. The Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

23.10.2007

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To

1. The Commercial Tax Officer,
Cuddalore Taluk Asst. Circle,
Mnjakuppam, Cuddalore-607 001.

2. The Deputy Commissioner (CT),
Vellore Division, Vellore.

S. MANIKUMAR, J.

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